

249353



U.S. Department
of Transportation

**Federal Railroad
Administration**

DEPT. OF TRANSPORTATION
107-100

400 Seventh St., S.W.
Washington, D.C. 20590

2003 JUL 18 PM 17

JUL 18 2003

2003 JUL 22 AM 8:46
OFFICE OF CHIEF COUNSEL

Ing. Antonio Lozada Bautista
Direccion de Transporte Ferroviario
Director General de Transporte Terrestre
Secretaria de Comunicaciones y Transporte
115 Calle de Nueva York
Piso 6
Colonia Napoles
Codigo Postal 03810
Mexico D. F.

FRA-2001-11068-27

Dear Ing. Lozada:

I am writing you as part of the Federal Railroad Administration's (FRA) consultations with the Mexican Government with regard to the FRA proposed rule (NPRM) regarding applicability of certain requirements concerning control of alcohol and drug use in railroad operations as they would apply to foreign-based employees of foreign railroads entering the United States and performing train or dispatching service service (66 Fed. Reg. 6400 (2001)). We discussed this rulemaking with you and other representatives of the Secretaría de Comunicaciones y Transportes (SCT), as well as with representatives of Transport Canada, at the May 28 Land Transportation Standards Subcommittee/Transportation Consultation Group (LTSS/TCG) meeting.

At this meeting, Dr. José Valente Aguilar of the SCT indicated that Mexico would shortly be issuing regulations that would be compatible with FRA's rules, with the goal of complete mutual recognition between the two programs. Dr. Aguilar stated that the Mexican Government currently conducts over two million tests annually, including a minimum of two random tests per year for each transportation employee, and that Mexico also conducts daily on-site fitness-for-duty checks. The forthcoming SCT rulemaking would privatize the Mexican Government's program and expand it by requiring testing of foreign-based employees of foreign railroads as one condition to entry (visual and hearing acuity and other examinations would also be performed by physicians stationed at the border or in mobile medical units). Dr. Aguilar stated that this rule, which is expected to make Mexico's program fully equivalent to that of the United States Department of Transportation, should be published this year.

Based upon the considerations discussed between our staffs, as well as other comments to the docket, FRA intends to issue a final rule that would revise the proposed rule in a number of respects. While applicable rulemaking law and procedures preclude us from specifying in advance the revisions we are contemplating, we believe that the final rule will reasonably address the concerns which Canadian representatives expressed to us during the consultation process.

The issues that we would address include the following:

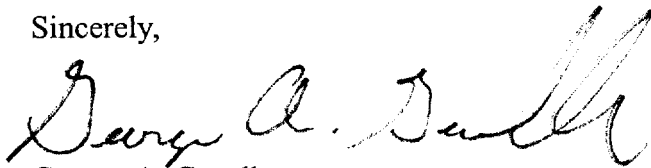
- The creation and scope of an exclusion for foreign-based employees of foreign railroads who enter U.S. territory to perform train or dispatching service.
- The circumstances and procedures under which requirements of the rule could be waived.
- The authority of foreign railroads to conduct testing partially or exclusively on U.S. soil and the scope of sanctions applied to employees who violate FRA rules.
- The exemption of current employees from pre-employment testing requirements.
- The circumstances under which FRA could recognize a foreign government's drug and alcohol program as equivalent to FRA's.

FRA will publish a Federal Register notice announcing the proposed changes to the NPRM and providing the public with a very brief period to comment. You will be provided with a copy of this notice. FRA will, of course, carefully consider any comments that are filed when issuing the final rule.

A similar letter is being sent to the Canadian Government representatives.

Thank you very much for the constructive work of the SCT on this and other matters of mutual interest.

Sincerely,



George A. Gavalla
Associate Administrator for Safety

cc: Dr. José Valente Aguilar
Director General
de la Dirección General de Protección y Medicina Preventiva en el Transporte
de la Secretaría de Comunicaciones y Transportes

Mr. Luc Bourdon
Director General
Rail Safety
Transport Canada